

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TUDOR INSURANCE COMPANY,
Plaintiff,

v.

ASSOCIATED LAND TITLE, LLC, and
FIDELITY NATIONAL TITLE
INSURANCE COMPANY,
Defendants, _____/

Case No. 08-11831

FIDELITY NATIONAL TITLE
INSURANCE COMPANY,
Cross-Claimant,

Honorable Patrick J. Duggan

v.

ASSOCIATED LAND TITLE, LLC,
Cross-Defendant, _____/

FIDELITY NATIONAL TITLE
INSURANCE COMPANY,
Third-Party Plaintiff,

v.

STEPHEN J. SMITH,
Third-Party Defendant, _____/

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AND GRANTING PLAINTIFF LEAVE TO
AMEND COMPLAINT**

On February 22, 2008, Tudor Insurance Company ("Tudor") filed this diversity action seeking a declaration that it has the right to rescind an errors and omissions ("E&O") liability insurance policy issued to Associated Land Title, LLC ("Associated"),

with an effective date of May 1, 2007. Tudor later amended its complaint to add Fidelity National Title Insurance Company (“Fidelity”) as a defendant due to Fidelity’s potential claims under the E&O policy that is the subject of this suit.

Presently before the Court is Tudor’s motion for “partial summary judgment” filed pursuant to Federal Rule of Civil Procedure 56(a) on May 14, 2010. In its motion, Tudor contends that Fidelity’s claims against Associated are excluded from coverage under the E&O Policy. Fidelity filed a response to the motion on June 18, 2010, contending that Tudor’s arguments are beyond the rescission claim set forth in its initial and amended complaint and therefore have been waived. Tudor filed a reply brief on July 9, 2010, seeking *inter alia* to amend its complaint to assert the defense of exclusion. Associated has not responded to the motion. The Court held a motion hearing on October 7, 2010.

For the reasons set forth at the motion hearing, the Court concludes that Tudor has not waived the defenses it raises in its pending summary judgment motion and should be allowed to amend its complaint to assert those defenses.

Accordingly,

IT IS ORDERED, that Plaintiff Tudor Insurance Company may file a second amended complaint within ten (10) days of this order;

IT IS FURTHER ORDERED, that Plaintiff Tudor Insurance Company may renew

its motion for partial summary, if it chooses to do so, within ten (10) days following any response(s) to its second amended complaint.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Dated: October 7, 2010
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